

* **HIGH COURT OF DELHI : NEW DELHI**

Crl. Rev. P. No.533/2008 & Crl.M.A. No.11238/2008

% Judgment reserved on: 11th February, 2010

Judgment delivered on: 25th February, 2010

1. Sonu
S/o. Sh. D. Venkat Rao

2. D. Venkat Rao
S/o. Sh. D. Narayan

3. Saroja
W/o. Sh. D. Venkat Rao

All R/o. D-386 (Servants Quarter),
Defence Colony,
New Delhi.

....Petitioners

Through: Mr. Satya Narayan and Ms.
Arundati Katju, Advs.

Versus

State
Through Standing Counsel (Crl.)
Delhi High Court
New Delhi

... Respondent.

Through: Mr. Arvind Kr. Gupta, APP.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported

in the Digest?

Yes

V.B.Gupta, J.

Present petition has been filed under Sections 397 & 401 of the Code of Criminal Procedure, 1973 against order on charge as well as charge dated 26th July, 2008, passed by Additional Sessions Judge, Delhi.

2. Brief facts of this case are that on 16.07.2007 on receiving DD No.9A, SI Arvind Kumar along with constable went to D-386 Defence Colony, where a dead body of a female was lying in the toilet of the servant quarter at first floor and the body was fully burnt. The name and address of the lady was Gyatri wife of Sonu r/o. 6, Aliganj, Kotla Mubarakpur, aged 26 years, who had got married on 15.5.05. Proceedings U/S. 176 of Cr.P.C. were conducted. Family members of the deceased had come to the spot.

3. Smt. Saroja, mother of deceased gave her statement to the Tehsildar that the marriage of her daughter was solemnized about two years ago with Sonu with the consent of both the families. In the marriage, no demand of dowry was made by her in laws and as per status, she gave the dowry. After marriage, the in laws of Gyatri did not make any demand of dowry neither Gyatri made any complaint in this regard to her.

4. About 1 ½ years ago, her daughter gave birth to a female child and thereafter, the mother in law and father in law, started harassing her daughter. These persons used to abuse Gayatri and used to say that she

does not do work and on this issue there used to be quarrel. On the night of 15.07.07, Gyatri came to her and told that she and her husband will live separately at D-386, Defence Colony, New Delhi, in a servant quarter. Today at around 4 O' Clock, the police informed that Gyatri has died. She had doubt that her husband, the mother in law and father in law have killed her and her daughter has been mentally tortured and she was forced to finish her life.

5. Trial court, vide impugned order held that a prima facie case, is made out against all the appellants, qua the commission of offences punishable under Section 498-A read with Section 34 IPC and Section 306 read with Section 34 IPC. Accordingly, charges were framed.

6. It is contended by learned counsel for petitioners that on 16.07.2007, the executive Magistrate had recorded the first statement of the complainant and her other relatives, wherein neither any allegation pertaining to demand of dowry nor cruelty were made against the Petitioners. Due to this reason on the basis of the alleged first statement, no action was taken by the police against the petitioners. In the first statement dated 16.07.2007, name of the petitioner No.1 does not figure, either in the statement of the Complainant or in the statement of any of her other relative.

7. Other contention is that there are no allegations against the petitioners, either for demand of dowry or any kind of abetment to commit

suicide. Moreover, none of the ingredients of Section 498-A/34 IPC or 306/34 IPC are made out against the petitioners.

8. Moreover, as per statements dated 16.07.2007 and 17.07.2007, there are no allegations for any demand of dowry and in these circumstances, the trial court did not frame charge against the petitioners and his parents for the alleged commission of dowry death, but on the contrary it framed charge U/s 498-A I.P.C in absence of any demand of dowry which is not tenable in the eyes of law.

9. Lastly, in the absence of the evidence of common intention, charge U/s 34 IPC cannot be framed against the petitioners.

10. In support of its contentions, learned counsel for petitioners cited following judgments;

- (i) ***Sanju @ Sanjay Singh Sengar v. State of M.P.***
(2002) CrL.L.J.2796;
- (ii) ***Ramesh Kumar v. State of Chhatisgarh***
2001 RCR (CrL.) 537;
- (iii) ***Bagwan Das v. Kartar Singh & Ors.***
2007(3) RCR (CrL.)87;
- (iv) ***Kishori Lal v. State of M.P.***
2007(3) RCR (CrL.) 385;
- (v) ***Prashant Manchanda v. Lt. Governor of Delhi & Anr.***
2007 (2) JCC 1227;
- (vi) ***Sohan Raj Sharma v. State of Haryana***
2008(2) JCC 1166;

(vii) *Sonti Rama Krishna v. Sonti Shanti Sree & Anr.*
2009(1) JC 115 and;

(viii) *Babita v. State*
2009(2) JCC 1247.

11. On the other hand, it is contended by learned counsel for the State that as per statement of prosecution witnesses, there was demand of dowry and deceased was subject to cruelty. The statement given by the mother of deceased is a natural and true statement. She admits that at the time of marriage there was no demand of dowry. But after a female child was born, her in laws started harassing and torturing the deceased. The deceased committed suicide immediately one day after she shifted from her in laws house. The trial court rightly framed charges in this case.

12. The relevant provisions of law in the present case are Section 107 IPC which defines abetment, Section 306 IPC which provides punishment for abetment of suicide, Section 498A IPC which defines cruelty and Section 113A of Indian Evidence Act, 1872 which deals with presumption as to abetment of suicide by a married woman.

Section 107. Abetment of a thing- A person abets the doing of a thing, who-

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or

illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation1:- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Section 306. Abetment of suicide- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

498A. Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

113A. Presumption as to abatement of suicide by a married woman- When the question is whether the commission of suicide by a woman had been abetted by her

husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation - For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

13. The first question which arises for consideration is as to whether there was any material before the trial court to frame charge under Section 306 IPC.

14. As per definition of abetment as laid down under Section 107 IPC, there has to be instigation to commit suicide on behalf of the accused persons. There is no averment in the statement of the witnesses that any of the petitioners instigated the deceased to commit suicide. In the present case, there is no evidence to show that any of the petitioners by their acts instigated or provoked the deceased to commit suicide. None of the petitioners have done any act which could be said to have facilitated the commission of suicide by deceased. Prima facie, in the absence of any cogent and reliable evidence to establish abetment of suicide by the petitioners, no charge under Section 306 IPC can be framed. There is no material on record to show that petitioners inflicted any torture upon the deceased immediately prior to the incident of suicide by the deceased.

15. In **Sanju@Sanjay (Supra)**, the court observed;

“where suicide was not the direct result of the quarrel when the appellant used abusive language and told the deceased to go and die, no offence under Section 306 IPC is made out.”

16. Similarly, in **Kishori Lal (Supra)**, it has been observed that;

“Mere fact that the husband treated the deceased-wife with cruelty is not enough to bring the case within the parameters of Section 306 IPC.”

17. So, prima facie no offence under Section 306 IPC is made out against any of the petitioners.

18. Now coming to offence u/s 498A IPC, cruelty has been defined by the explanation added to the Section itself. The basic ingredients of Section 498A IPC are cruelty and harassment. The elements of cruelty so far as clause (a), is concerned, have been classified as follows:

- (i) any ‘wilful’ conduct which is of such a nature as is likely to drive the woman to commit suicide; or
- (ii) any ‘wilful’ conduct which is likely to cause grave injury to the woman; or
- (iii) any ‘wilful’ act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

19. For the purpose of clause (b) the essential ingredients are as under:

- (I) The harassment of a married woman

(II) With a view to coercing her or any person related to her to meet the unlawful demand of dowry or for any property or valuable security or on account of her failure or failure of any person related to her to meet such a demand.

20. Therefore, it is evident that the charge under Section 498A can be brought home if the essential ingredients either in clause (a) or (b) or both are found duly established.

21. In the present case, as per statement of the complainant, after the birth of girl, the father in law, mother in law and husband of deceased started harassing the deceased. They started taunting the deceased on petty issues and used to torture and harass the deceased.

22. So, there are sufficient grounds for framing charge under Section 498A IPC.

23. Consequently, present Revision Petition is partly allowed. Order framing charge under Section 306 IPC against petitioners is quashed. However, the trial against all the petitioners shall proceed under Section 498A IPC only and they should be tried by a court having the jurisdiction to try offence under Section 498A IPC.

24. Copy of this order be sent to the trial court.

25. Parties to appear before trial court on 22nd March, 2010.

26. With these observations, present petition stands disposed of.

27. Trial court record be sent back.

25th February, 2010
RB

V.B. GUPTA, J.